Consumer Financial Services Legal & Regulatory Update: COVID-19

Wednesday, March 25, 2:00-2:50 pm ET

Panelists

R. Andrew Arculin, Partner

Allyson B. Baker, Partner

Andrew E. Bigart, Partner

Laura R. Biddle, Partner

Joshua H. Raymond, Partner

Gerald S. (Gerry) Sachs, Partner

Jonathan L. Pompan, Partner, *Moderator*

VENABLE LLP

Welcome

This presentation is being recorded and will be available at www.Venable.com next week.

Please follow the onscreen prompts for submitting questions. Contacting us does not create an attorney-client relationship. While Venable would like to hear from you, we cannot represent you, or receive any confidential information from you, until we know that any proposed representation would be appropriate and acceptable, and would not create any conflict of interest. Accordingly, do not send Venable (or any of its attorneys) any confidential information.

This presentation is for general informational purposes only and does not represent and is not intended to provide legal advice or opinion and should not be relied on as such. Legal advice can be provided only in response to specific fact situations.

This presentation does not represent any undertaking to keep recipients advised as to all or any relevant legal developments.

CLE Credit

This activity has been approved for Minimum Continuing Legal Education credit by the State Bar of California in the amount of .75 hour, of which .75 hour applies to the general credit requirement, and by the State Bar of New York in the amount of 1 credit hour, of which 1 credit hour can be applied toward the Areas of Professional Practice requirement. Venable certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California and State Bar of New York, which govern minimum continuing legal education. Venable is a State Bar of California and State Bar of New York approved MCLE provider.

A code will be distributed through the Q&A chat section at the end of the program, and a CLE submission form will be sent to participants next week via email.

Today’s Discussion

- Federal Response to COVID-19 (Update on Stimulus and More)
- Federal and State Regulatory Agency Policy and Rulemaking Update
- Mitigation Measures for Lending, Mortgage, Debt Collection
- COVID-19 Implications for State Supervision and Examinations, and Licensing
- Enforcement Priorities During the COVID-19 Pandemic
- Federal and State Regulatory Guidance on Working Remotely for Consumer Financial Services Providers
- FinTech and RegTech Opportunities and Challenges
- Quick Hits on Electronic Signatures and Steps to Take to Minimize New Compliance Risks
- Venable COVID-19 Resources

Welcome and Today's Panelists…

R. Andrew Arculin
Partner

Allyson B. Baker
Partner

Andrew E. Bigart
Partner

Laura R. Biddle
Partner

Joshua H. Raymond
Partner

Gerald S. (Gerry) Sachs
Partner

Jonathan L. Pompan, Moderator
Partner

VENABLE LLP

Federal Response to COVID-19 (Update on Stimulus and More)

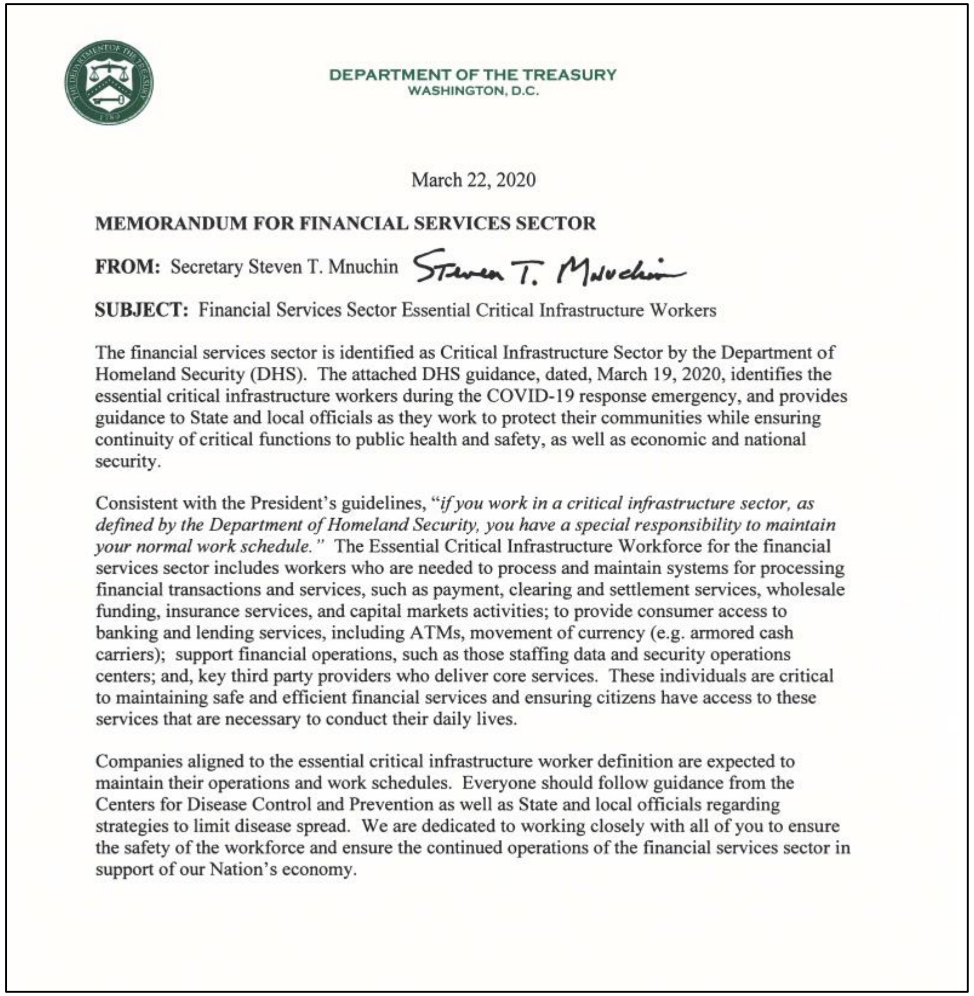
Massive “Rescue” Package

VENABLE LLP

Federal and State Regulatory Agency Policy and Rulemaking Update

Regulators Urging Financial Services Sector to Help

- Treasury "Financial Services" Identifies Essential Critical Infrastructure Workforce.
- Federal Regulators providing banks tools to assist households, businesses and the economy more broadly.
  - Enhanced credit resources - The agencies are taking actions to facilitate the flow of credit to households and businesses, including changes to regulatory and monetary policy.
  - Regulatory relief - The agencies are providing regulatory relief to support banks' efforts to provide financial services to those impacted by the crisis.


DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

March 22, 2020

MEMORANDUM FOR FINANCIAL SERVICES SECTOR

FROM: Secretary Steven T. Mnuchin Steven T. Mnuchin

SUBJECT: Financial Services Sector Essential Critical Infrastructure Workers

The financial services sector is identified as Critical Infrastructure Sector by the Department of Homeland Security (DHS). The attached DHS guidance, dated, March 19, 2020, identifies the essential critical infrastructure workers during the COVID-19 response emergency, and provides guidance to State and local officials as they work to protect their communities while ensuring continuity of critical functions to public health and safety, as well as economic and national security.

Consistent with the President's guidelines, "*if you work in a critical infrastructure sector, as defined by the Department of Homeland Security, you have a special responsibility to maintain your normal work schedule.*" The Essential Critical Infrastructure Workforce for the financial services sector includes workers who are needed to process and maintain systems for processing financial transactions and services, such as payment, clearing and settlement services, wholesale funding, insurance services, and capital markets activities; to provide consumer access to banking and lending services, including ATMs, movement of currency (e.g. armored cash carriers); support financial operations, such as those staffing data and security operations centers; and, key third party providers who deliver core services. These individuals are critical to maintaining safe and efficient financial services and ensuring citizens have access to these services that are necessary to conduct their daily lives.

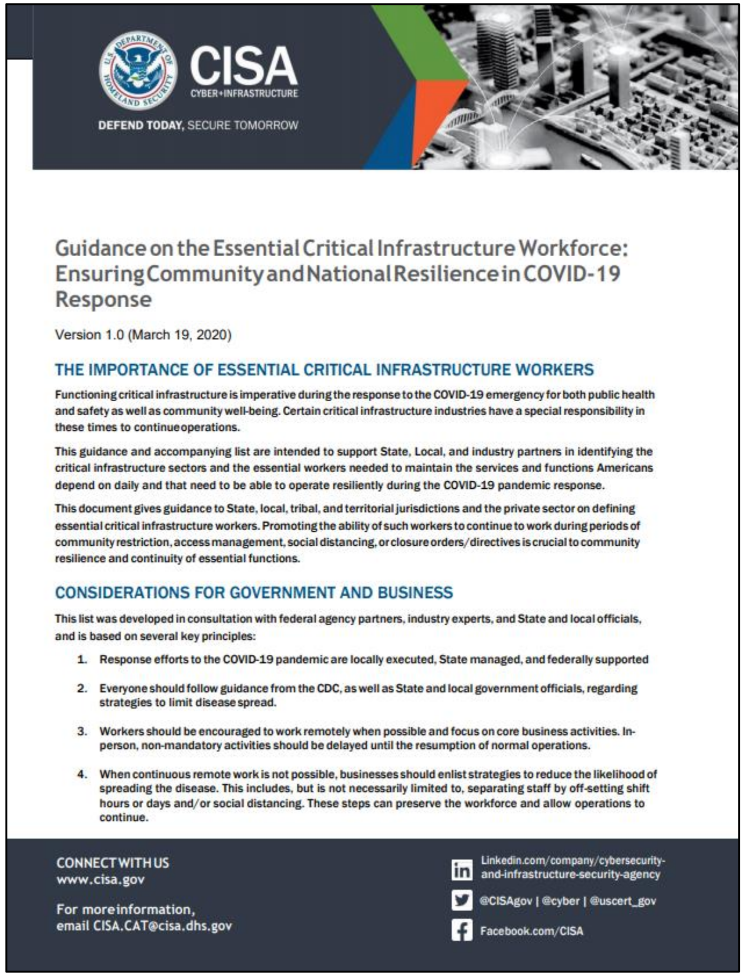
Companies aligned to the essential critical infrastructure worker definition are expected to maintain their operations and work schedules. Everyone should follow guidance from the Centers for Disease Control and Prevention as well as State and local officials regarding strategies to limit disease spread. We are dedicated to working closely with all of you to ensure the safety of the workforce and ensure the continued operations of the financial services sector in support of our Nation's economy.

VENABLE LLP

Treasury Memorandum re Essential Critical Infrastructure

Essential Critical Infrastructure Workforce for the financial services sector as follows:

- Workers who are needed to process and maintain systems for processing financial transactions and services, such as **payment, clearing and settlement services, wholesale funding, insurance services, and capital market activities**;
- Workers who are needed to provide **consumer access to banking and lending services**, including ATMs, movement of currency (e.g., armored cash carriers);
- Workers who are needed to **support financial operations**, such as those staffing **data and security operations** centers; and
- “**key third-party providers who deliver core services.**”
- These essential worker categories are consistent with the initial list of Essential Critical Infrastructure Workers developed by the Cybersecurity and Infrastructure Security Agency (CISA). The CISA list is advisory in nature and should not be considered a federal directive or standard in and of itself.


CISA
CYBER+INFRASTRUCTURE
DEFEND TODAY, SECURE TOMORROW

Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response

Version 1.0 (March 19, 2020)

THE IMPORTANCE OF ESSENTIAL CRITICAL INFRASTRUCTURE WORKERS

Functioning critical infrastructure is imperative during the response to the COVID-19 emergency for both public health and safety as well as community well-being. Certain critical infrastructure industries have a special responsibility in these times to continue operations.

This guidance and accompanying list are intended to support State, Local, and industry partners in identifying the critical infrastructure sectors and the essential workers needed to maintain the services and functions Americans depend on daily and that need to be able to operate resiliently during the COVID-19 pandemic response.

This document gives guidance to State, local, tribal, and territorial jurisdictions and the private sector on defining essential critical infrastructure workers. Promoting the ability of such workers to continue to work during periods of community restriction, access management, social distancing, or closure orders/directives is crucial to community resilience and continuity of essential functions.

CONSIDERATIONS FOR GOVERNMENT AND BUSINESS

This list was developed in consultation with federal agency partners, industry experts, and State and local officials, and is based on several key principles:

1. Response efforts to the COVID-19 pandemic are locally executed, State managed, and federally supported
2. Everyone should follow guidance from the CDC, as well as State and local government officials, regarding strategies to limit disease spread.
3. Workers should be encouraged to work remotely when possible and focus on core business activities. In-person, non-mandatory activities should be delayed until the resumption of normal operations.
4. When continuous remote work is not possible, businesses should enlist strategies to reduce the likelihood of spreading the disease. This includes, but is not necessarily limited to, separating staff by off-setting shift hours or days and/or social distancing. These steps can preserve the workforce and allow operations to continue.

CONNECT WITH US
www.cisa.gov

For more information,
email CISA.CAT@cisa.dhs.gov

Linkedin.com/company/cybersecurity-and-infrastructure-security-agency
@CISAgov | @cyber | @uscert_gov
Facebook.com/CISA

VENABLE LLP

Regulators Urging Banks to Help

- Enhanced Credit Resources
  - Use of Capital & Liquidity Buffers
  - Federal Funds Rate
  - Discount Window
  - Reserve Requirements
  - Intraday Credit
  - Community Reinvestment Act
- Regulatory Relief
  - Supervision
  - Examination
  - Reporting
  - Alternative Service Options

Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
Office of the Comptroller of the Currency

March 19, 2020

Joint Statement on CRA Consideration
for Activities in Response to COVID-19

The Board of Governors of the Federal Reserve System (Federal Reserve), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) (collectively, the agencies) recognize the potential for Coronavirus Disease (also referred to as COVID-19) to adversely affect the customers and operations of financial institutions. On March 9, 2020, the federal financial institution regulatory agencies and state bank regulators issued a statement to encourage financial institutions to meet the financial services needs of their customers and members in areas affected by COVID-19.[1]

Consistent with the March 9, 2020, statement and existing information that the agencies have provided in prior communications on disasters and national emergencies, the agencies encourage financial institutions to work with affected customers and communities, particularly those that are low- and moderate-income. The agencies recognize that such efforts—when consistent with safe and sound banking practices and applicable laws, including consumer protection laws—serve the long-term interests of these communities and the financial system.

Working with Customers. Pursuant to the Community Reinvestment Act (CRA), the agencies will favorably consider retail banking services and retail lending activities in a financial institution's assessment areas that are responsive to the needs of low- and moderate-income individuals, small businesses, and small farms affected by COVID-19 and that are consistent with safe and sound banking practices. These activities may include, but are not limited to:

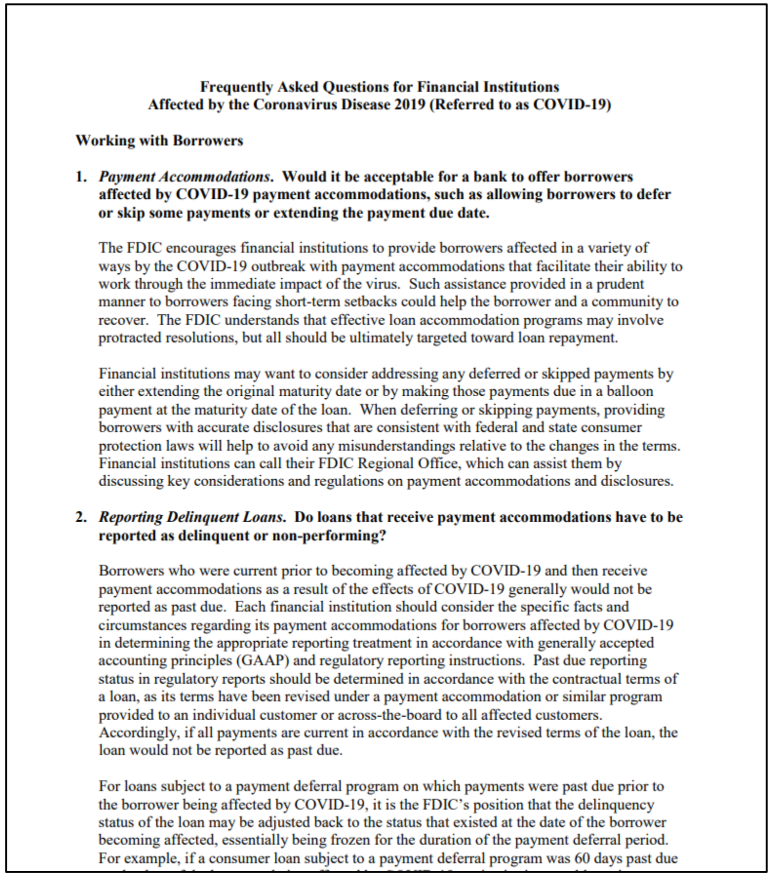
- Waiving certain fees, such as:
  - Automated teller machine (ATM) fees for customers and non-customers,
  - Overdraft fees,
  - Late payment fees on credit cards and other loans, and
  - Early withdrawal penalties on time deposits;
- Easing restrictions on cashing out-of-state and non-customer checks;
- Expanding the availability of other short-term, unsecured credit products for creditworthy borrowers;
- Increasing credit card limits for creditworthy borrowers;

[1] https://www.federalreserve.gov/newsevents/pressreleases/bcreg20200309a.htm (Federal Reserve); https://www.fdic.gov/news/news/press/2020/pr20025.html (FDIC); https://www.occ.gov/news-issuances/news-releases/2020/nr-ia-2020-30.html (OCC).

VENABLE LLP

Regulators Urging Banks to Help

- Key Takeaways
  - The ability of banks to continue serving the financial needs of their customers is critical during this crisis, not just for the customers, but for communities and the overall economy.
  - The agencies expect banks to work with customers impacted by COVID-19 and to make prudent accommodations where possible.
  - Bank actions should be taken with appropriate management oversight and consistent with safe and sound banking practices and applicable law, including consumer financial protection laws.
  - Banks (and supervised nonbanks) should be in regular contact with their examiners.



Frequently Asked Questions for Financial Institutions
Affected by the Coronavirus Disease 2019 (Referred to as COVID-19)

Working with Borrowers

1. ***Payment Accommodations.*** **Would it be acceptable for a bank to offer borrowers affected by COVID-19 payment accommodations, such as allowing borrowers to defer or skip some payments or extending the payment due date.**

   The FDIC encourages financial institutions to provide borrowers affected in a variety of ways by the COVID-19 outbreak with payment accommodations that facilitate their ability to work through the immediate impact of the virus. Such assistance provided in a prudent manner to borrowers facing short-term setbacks could help the borrower and a community to recover. The FDIC understands that effective loan accommodation programs may involve protracted resolutions, but all should be ultimately targeted toward loan repayment.

   Financial institutions may want to consider addressing any deferred or skipped payments by either extending the original maturity date or by making those payments due in a balloon payment at the maturity date of the loan. When deferring or skipping payments, providing borrowers with accurate disclosures that are consistent with federal and state consumer protection laws will help to avoid any misunderstandings relative to the changes in the terms. Financial institutions can call their FDIC Regional Office, which can assist them by discussing key considerations and regulations on payment accommodations and disclosures.

2. ***Reporting Delinquent Loans.*** **Do loans that receive payment accommodations have to be reported as delinquent or non-performing?**

   Borrowers who were current prior to becoming affected by COVID-19 and then receive payment accommodations as a result of the effects of COVID-19 generally would not be reported as past due. Each financial institution should consider the specific facts and circumstances regarding its payment accommodations for borrowers affected by COVID-19 in determining the appropriate reporting treatment in accordance with generally accepted accounting principles (GAAP) and regulatory reporting instructions. Past due reporting status in regulatory reports should be determined in accordance with the contractual terms of a loan, as its terms have been revised under a payment accommodation or similar program provided to an individual customer or across-the-board to all affected customers. Accordingly, if all payments are current in accordance with the revised terms of the loan, the loan would not be reported as past due.

   For loans subject to a payment deferral program on which payments were past due prior to the borrower being affected by COVID-19, it is the FDIC's position that the delinquency status of the loan may be adjusted back to the status that existed at the date of the borrower becoming affected, essentially being frozen for the duration of the payment deferral period. For example, if a consumer loan subject to a payment deferral program was 60 days past due

VENABLE LLP

Fintech Opportunities & Challenges

- Opportunities
  - Branch closures, surge in digital banking
  - Permanent changes in behavior
  - More partnership opportunities
    - Banks with no or limited digital strategy
    - Loan programs
  - ILC charters
  - Small Business Lending (focus of FTC and states)
- Challenges
  - Bank technology budgets may be strained in the near term

Mitigation Measures for Lending, Mortgage, Debt Collection

Lenders move to provide credit to households and business, and support consumers in need, while responding to regulatory announcements to suspend collections

VENABLE LLP

Mortgage – Foreclosure Relief

- Federal Agency Guidance to suspend foreclosures and evictions for at least 60 days.
  - Actions by Department of Housing and Urban Development (HUD) and Federal Housing Finance Agency (FHFA) for government program and GSE Loans.
  - Federal programs implementing special forbearance programs for borrowers affected by COVID-19 crisis, with hardship forbearance up to 12 months.
- Other actions to mitigate foreclosures and evictions by private market and various regulators.
  - Private lenders and investors implementing similar measures by FHFA and HUD.
  - Consumer Financial Protection Bureau (agency in charge of administering and enforcing federal mortgage servicing and loss mitigation rules) issued statement in support of foreclosure suspension and offered to work with affected borrowers through complaint portal.
  - State and local governments instituting their own protective measures.

Mortgage and Consumer Loan Origination

- FHFA also announced accommodations for GSE underwriting requirements relating to employment verifications and appraisals.
  - Ability to substitute email, paystubs, or bank records showing recent deposit for verbal employment verification.
  - More flexible appraisal requirements to reduce need for appraisers to conduct in-home inspections.
- Federal Reserve will purchase as much as $200 billion in mortgage-backed securities to bolster the secondary mortgage market and provide liquidity.
  - Fed also announced the creation of the Term Asset-Backed Securities Loan Facility to back the flow of credit to households and businesses.
  - Facility will support the issuance of asset-backed securities backed by student loans, auto loans, credit card loans and Small Business Administration-guaranteed loans, which will offer some relief to those borrowers.

VENABLE LLP

Spotlight: CFPB Rulemaking Agenda & COVID-19

- **Debt Collection Rulemaking:**
  - NPRM re Third Party Debt Collection – Spring 2019 (Comments due September 18, 2019)
    - Status: Processing Comments
  - *New:* SNPRM re Time-Barred Debt – February 21, 2020
    - Status: Comment Period Extended to June 5, 2020 (previously May 2, 2020)
- Payday, Vehicle Title, and Certain High-Cost Installment Loans Rule
  - Status: Overhaul Under Review
- Other Open Rulemakings/Pre-rulemakings: remittance rule, loan originator compensation, use of electronic channels of communication in the origination and servicing of credit card accounts, small business lending data collection, and review of bureau activities
- Congressional Review Act Considerations

VENABLE LLP

Practical Tips During COVID-19 Crisis

- Mortgage Lenders
  - Online/digital lending more important than ever with accelerated movement to digital closings and electronic documentation
    - Some states modifying notary requirements, for virtual services
  - Consider legal implications of ATR, disclosures, rescission, etc.
  - QM safe harbors could finally be tested in court
- Mortgage Servicers
  - Loss mitigation and early intervention back to the forefront
  - Monitor changes to investor guidelines closely and revamp intake procedures
  - Monitor state-specific changes and guidance
- Installment Lenders/Fintech
  - Loan modifications, deferments, emergency relief loans, etc.
- Debt Collection
  - Authority to collect will vary state-by-state, and by asset class. Some states suspending statute of limitations. So each lender/collector needs to have a state-by-state strategy.
- CFPB's workshop on Evolutions in Consumer Debt Relief / MARS Rule, MAP Rule, Telemarketing Sales Rule (restrictions on Debt Relief, Credit Repair and Advance Fee Loans), state Debt Adjusting and Mortgage Foreclosure Assistance Laws

COVID-19 Implications for State Supervision and Examinations, and Licensing

CSBS and States encourage consumer support; adjust operations

State Agencies Respond to COVID-19

- Federal financial institution regulators and state regulators engage financial institutions to meet the financial needs of customers and members affected by the coronavirus.
- The agencies will provide appropriate regulatory assistance to affected institutions subject to their supervision.
- Institutions should work constructively with borrowers and other customers in affected communities.
  – Prudent efforts that are consistent with safe and sound lending practices should not be subject to examiner criticism.
- Expedite, as appropriate, any request to provide more convenient availability of services in affected communities.
- Work with affected financial institutions in scheduling examinations or inspections to minimize disruption and burden.
  – Joint Press Release, Fed, FDIC, CFPB, CSBS, NCUA, OCC (March 9, 2020)

- State Agency Communication / Guidance
  – Varies, suspension of branch office for telework, collection activity, etc.

NMLS

State Agency Communication/Guidance on Coronavirus/COVID-19

As the Coronavirus/COVID-19 situation develops and state agencies send communication/guidance to licensees, information will be shared on this page. If you are unsure how to operate during the Coronavirus/COVID-19 situation, please review the state agency websites and any guidance provided below. If you have additional questions, see the State Agency Contacts page for your agency's contact information. Make sure to stay safe and informed by visiting the CDC's Coronavirus page.

Agency Home Page	Guidance/Communication[1]
Alaska Department of Commerce, Community & Economic Development	Coronavirus message – Updated 3/15/20
Alabama State Banking Department	Pandemic Planning
Alabama Securities Commission	-
Arkansas Securities Department	Interim Regulatory Guidance
Arizona Department of Financial Institutions	-
California Department of Business Oversight	-
California Department of Real Estate	COVID-19 FAQs for Licensing Processes and Business Practices
Colorado Department of Regulatory Agencies- Department of Real Estate	Division Advisory
Connecticut Department of Banking	Temporarily Working from Home
District of Columbia Department of Insurance, Securities and Banking Bureau	-
Delaware Office of the State Bank Commissioner	-
Florida Office of Financial Regulation	-
Georgia Department of Banking and Finance	-
Guam Department of Revenue and Taxation	-
Hawaii Division of Financial Institutions	-
Iowa Division of Banking	Guidance for Working Remotely
Idaho Department of Finance	Temporary Regulatory Guidance
Illinois Department of Financial and Professional Regulation	-
Indiana Department of Financial Institutions	Guidance for Mortgage Lenders & MLOs
Indiana Secretary of State Securities Division	-
Kansas Office of the State Bank Commissioner	• Remotely Working from Residence or Other Company Designated Location • KS Executive Order No. 20-06 - Prohibiting Foreclosures
Kentucky Department of Financial Institutions	COVID-19 Guidance

[1] This column will be updated as agencies communicate about the Coronavirus. Dashes indicate that the state agency has not yet provided additional guidance to industry.

Updated 3/24/2020 2:35 PM Page 1 of 4

Source: https://nationwidelicensingsystem.org/NMLS%20Document%20Library/Coronavirus%20State%20Agency%20Resource.pdf

VENABLE LLP

Enforcement Priorities During the COVID-19 Pandemic

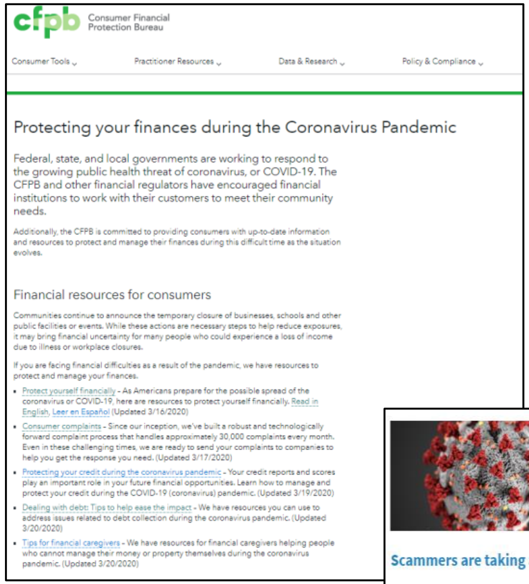
CFPB, FTC, and States remain open and active

Financial Services Enforcement Activity

- Highlights from across the country
  - FTC
    - Warning Letters and new litigation only when necessary.
    - FTC, FDA Warn 7 Companies about Unsupported Claims that Products Can Treat or Prevent Coronavirus. (March 9, 2020)
    - Recent settlements likely product of agreements reached 6-8 weeks ago.
  - CFPB
    - Oversight of vulnerable populations more likely to result in new lawsuits.
    - Ongoing litigation will continue dependent on courts and opposing parties.
    - Continuing investigations with no in-person contacts – e.g., data requests (CIDs).
  - CA Department of Business Oversight
    - Likely to continue regulating and take action if absolutely necessary.
    - Announces settlement with point of sale lender Afterpay. (March 16, 2020) – Restitution, fees, and obtain a license.
    - Announces settlement with point of sale lender Sezzle. (Jan. 16, 2020) – Restitution, fees, obtain a license.
  - NY
    - No new enforcement actions in March 2020.
    - Accommodation to consumers / borrowers in Circular 7. (March 19, 2020)

Financial Services Enforcement Activity

- Nominal slowdown in some areas, due to focus on immediate regulatory relief related to coronavirus.
  - All non-critical federal agency employees are teleworking and all non-critical travel is prohibited.
  - State agencies and telework depend on the state.
- Continuation of all investigations that involve data requests and no personal contact.
- Delays for all in-person interviews, investigational hearings, or in-person meetings.
- Tolling agreements to prevent statute of limitations issues.
- May still see lawsuits filed, but only for urgent matters.
  - False statements about coronavirus or taking advantage of the elderly.
  - Debt relief services, including mortgage and student loan debt relief.
  - Government benefit scams.



cfpb Consumer Financial Protection Bureau

Consumer Tools Practitioner Resources Data & Research Policy & Compliance

Protecting your finances during the Coronavirus Pandemic

Federal, state, and local governments are working to respond to the growing public health threat of coronavirus, or COVID-19. The CFPB and other financial regulators have encouraged financial institutions to work with their customers to meet their community needs.

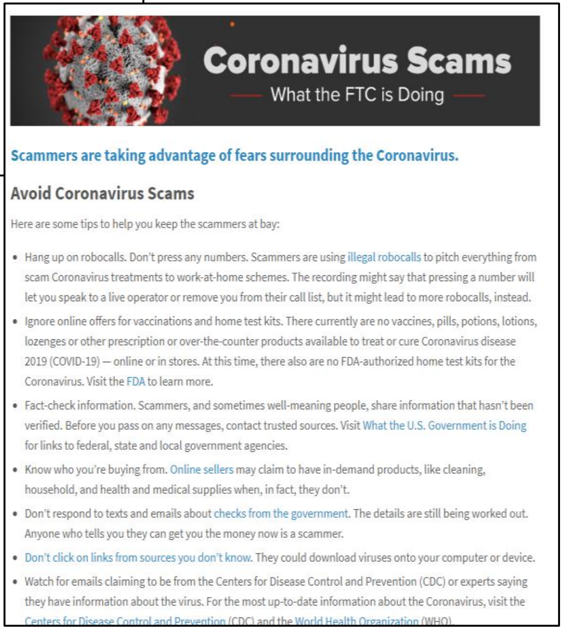
Additionally, the CFPB is committed to providing consumers with up-to-date information and resources to protect and manage their finances during this difficult time as the situation evolves.

Financial resources for consumers

Communities continue to announce the temporary closure of businesses, schools and other public facilities or events. While these actions are necessary steps to help reduce exposures, it may bring financial uncertainty for many people who could experience a loss of income due to illness or workplace closures.

If you are facing financial difficulties as a result of the pandemic, we have resources to protect and manage your finances.

- Protect yourself financially - As Americans prepare for the possible spread of the coronavirus or COVID-19, here are resources to protect yourself financially. Read in English, Leer en Español (Updated 3/16/2020)
- Consumer complaints - Since our inception, we've built a robust and technologically forward complaint process that handles approximately 30,000 complaints every month. Even in these challenging times, we are ready to send your complaints to companies to help you get the response you need. (Updated 3/17/2020)
- Protecting your credit during the coronavirus pandemic - Your credit reports and scores play an important role in your future financial opportunities. Learn how to manage and protect your credit during the COVID-19 (coronavirus) pandemic. (Updated 3/19/2020)
- Dealing with debt: Tips to help ease the impact - We have resources you can use to address issues related to debt collection during the coronavirus pandemic. (Updated 3/20/2020)
- Tips for financial caregivers - We have resources for financial caregivers helping people who cannot manage their money or property themselves during the coronavirus pandemic. (Updated 3/20/2020)



Scammers are taking advantage of fears surrounding the Coronavirus.

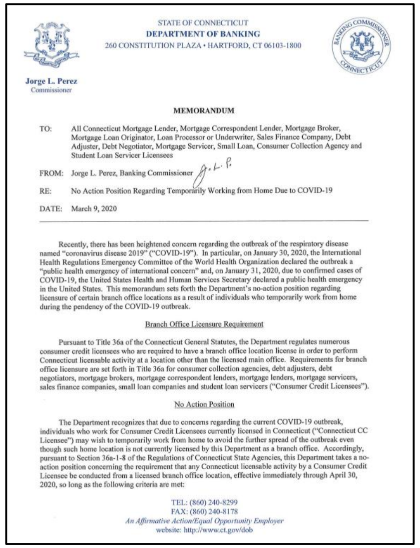
Avoid Coronavirus Scams

Here are some tips to help you keep the scammers at bay:

- Hang up on robocalls. Don't press any numbers. Scammers are using illegal robocalls to pitch everything from scam Coronavirus treatments to work-at-home schemes. The recording might say that pressing a number will let you speak to a live operator or remove you from their call list, but it might lead to more robocalls, instead.
- Ignore online offers for vaccinations and home test kits. There currently are no vaccines, pills, potions, lotions, lozenges or other prescription or over-the-counter products available to treat or cure Coronavirus disease 2019 (COVID-19) — online or in stores. At this time, there also are no FDA-authorized home test kits for the Coronavirus. Visit the FDA to learn more.
- Fact-check information. Scammers, and sometimes well-meaning people, share information that hasn't been verified. Before you pass on any messages, contact trusted sources. Visit What the U.S. Government is Doing for links to federal, state and local government agencies.
- Know who you're buying from. Online sellers may claim to have in-demand products, like cleaning, household, and health and medical supplies when, in fact, they don't.
- Don't respond to texts and emails about checks from the government. The details are still being worked out. Anyone who tells you they can get you the money now is a scammer.
- Don't click on links from sources you don't know. They could download viruses onto your computer or device.
- Watch for emails claiming to be from the Centers for Disease Control and Prevention (CDC) or experts saying they have information about the virus. For the most up-to-date information about the Coronavirus, visit the Centers for Disease Control and Prevention (CDC) and the World Health Organization (WHO).

VENABLE LLP

Federal and State Regulatory Guidance on Working Remotely for Consumer Financial Services Providers



STATE OF CONNECTICUT
DEPARTMENT OF BANKING
260 CONSTITUTION PLAZA • HARTFORD, CT 06103-1800

Jorge L. Perez
Commissioner

MEMORANDUM

TO: All Connecticut Mortgage Lender, Mortgage Correspondent Lender, Mortgage Broker, Mortgage Loan Originator, Loan Processor or Underwriter, Sales Finance Company, Debt Adjuster, Debt Negotiator, Mortgage Servicer, Small Loan, Consumer Collection Agency and Student Loan Servicer Licensees

FROM: Jorge L. Perez, Banking Commissioner

RE: No Action Position Regarding Temporarily Working from Home Due to COVID-19

DATE: March 9, 2020

Recently, there has been heightened concern regarding the outbreak of the respiratory disease named "coronavirus disease 2019" ("COVID-19"). In particular, on January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization declared the outbreak a "public health emergency of international concern" and, on January 31, 2020, due to confirmed cases of COVID-19, the United States Health and Human Services Secretary declared a public health emergency in the United States. This memorandum sets forth the Department's no-action position regarding licensure of certain branch office locations as a result of individuals who temporarily work from home during the pendency of the COVID-19 outbreak.

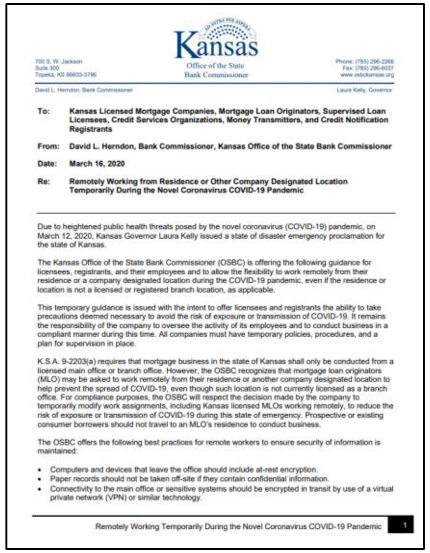
Branch Office Licensure Requirement

Pursuant to Title 36a of the Connecticut General Statutes, the Department regulates numerous consumer credit licensees who are required to have a branch office location license in order to perform Connecticut licensable activity at a location other than the licensed main office. Requirements for branch office licensure are set forth in Title 36a for consumer collection agencies, debt adjusters, debt negotiators, mortgage brokers, mortgage correspondent lenders, mortgage lenders, mortgage servicers, sales finance companies, small loan companies and student loan servicers ("Consumer Credit Licensees").

No Action Position

The Department recognizes that due to concerns regarding the current COVID-19 outbreak, individuals who work for Consumer Credit Licensees currently licensed in Connecticut ("Connecticut CC Licensee") may wish to temporarily work from home to avoid the further spread of the outbreak even though such home location is not currently licensed by this Department as a branch office. Accordingly, pursuant to Section 36a-1-8 of the Regulations of Connecticut State Agencies, this Department takes a no-action position concerning the requirement that any Connecticut licensable activity by a Consumer Credit Licensee be conducted from a licensed branch office location, effective immediately through April 30, 2020, so long as the following criteria are met:

TEL: (860) 240-8299
FAX: (860) 240-8178
An Affirmative Action/Equal Opportunity Employer
website: http://www.ct.gov/dob



Kansas
Office of the State Bank Commissioner

700 S. W. Jackson
Suite 300
Topeka, KS 66603-3796

Phone: (785) 296-2266
Fax: (785) 296-6037
www.osbckansas.org

David L. Herndon, Bank Commissioner
Laura Kelly, Governor

To: **Kansas Licensed Mortgage Companies, Mortgage Loan Originators, Supervised Loan Licensees, Credit Services Organizations, Money Transmitters, and Credit Notification Registrants**

From: **David L. Herndon, Bank Commissioner, Kansas Office of the State Bank Commissioner**

Date: **March 16, 2020**

Re: **Remotely Working from Residence or Other Company Designated Location Temporarily During the Novel Coronavirus COVID-19 Pandemic**

Due to heightened public health threats posed by the novel coronavirus (COVID-19) pandemic, on March 12, 2020, Kansas Governor Laura Kelly issued a state of disaster emergency proclamation for the state of Kansas.

The Kansas Office of the State Bank Commissioner (OSBC) is offering the following guidance for licensees, registrants, and their employees and to allow the flexibility to work remotely from their residence or a company designated location during the COVID-19 pandemic, even if the residence or location is not a licensed or registered branch location, as applicable.

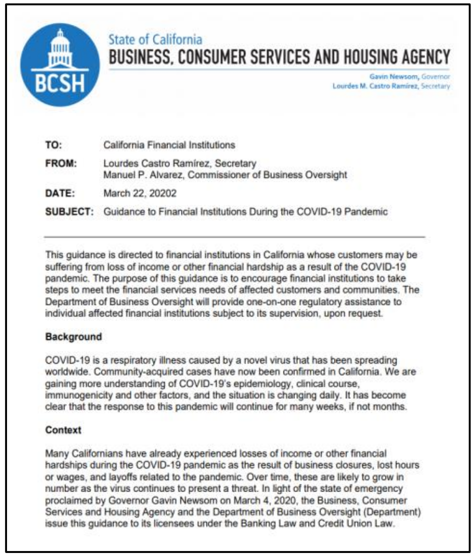
This temporary guidance is issued with the intent to offer licensees and registrants the ability to take precautions deemed necessary to avoid the risk of exposure or transmission of COVID-19. It remains the responsibility of the company to oversee the activity of its employees and to conduct business in a compliant manner during this time. All companies must have temporary policies, procedures, and a plan for supervision in place.

K.S.A. 9-2203(a) requires that mortgage business in the state of Kansas shall only be conducted from a licensed main office or branch office. However, the OSBC recognizes that mortgage loan originators (MLO) may be asked to work remotely from their residence or another company designated location to help prevent the spread of COVID-19, even though such location is not currently licensed as a branch office. For compliance purposes, the OSBC will respect the decision made by the company to temporarily modify work assignments, including Kansas licensed MLOs working remotely, to reduce the risk of exposure or transmission of COVID-19 during this state of emergency. Prospective or existing consumer borrowers should not travel to an MLO's residence to conduct business.

The OSBC offers the following best practices for remote workers to ensure security of information is maintained:

- Computers and devices that leave the office should include at-rest encryption.
- Paper records should not be taken off-site if they contain confidential information.
- Connectivity to the main office or sensitive systems should be encrypted in transit by use of a virtual private network (VPN) or similar technology.

Remotely Working Temporarily During the Novel Coronavirus COVID-19 Pandemic 1



BCSH
State of California
BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY

Gavin Newsom, Governor
Lourdes M. Castro Ramírez, Secretary

TO: California Financial Institutions

FROM: Lourdes Castro Ramírez, Secretary
Manuel P. Alvarez, Commissioner of Business Oversight

DATE: March 22, 20202

SUBJECT: Guidance to Financial Institutions During the COVID-19 Pandemic

This guidance is directed to financial institutions in California whose customers may be suffering from loss of income or other financial hardship as a result of the COVID-19 pandemic. The purpose of this guidance is to encourage financial institutions to take steps to meet the financial services needs of affected customers and communities. The Department of Business Oversight will provide one-on-one regulatory assistance to individual affected financial institutions subject to its supervision, upon request.

Background

COVID-19 is a respiratory illness caused by a novel virus that has been spreading worldwide. Community-acquired cases have now been confirmed in California. We are gaining more understanding of COVID-19's epidemiology, clinical course, immunogenicity and other factors, and the situation is changing daily. It has become clear that the response to this pandemic will continue for many weeks, if not months.

Context

Many Californians have already experienced losses of income or other financial hardships during the COVID-19 pandemic as the result of business closures, lost hours or wages, and layoffs related to the pandemic. Over time, these are likely to grow in number as the virus continues to present a threat. In light of the state of emergency proclaimed by Governor Gavin Newsom on March 4, 2020, the Business, Consumer Services and Housing Agency and the Department of Business Oversight (Department) issue this guidance to its licensees under the Banking Law and Credit Union Law.

VENABLE LLP

Working Remotely Best Practices (and Requirements)

- Examples of who is impacted:
  - Licensed mortgage bankers, mortgage brokers, mortgage servicers, mortgage loan originators
  - State chartered banks
  - Regulated and industrial loan companies
  - Consumer finance companies
  - Delayed deposit services businesses
  - Debt collectors
  - Debt adjusting/credit services
  - Money services businesses
- State requirements vary on "licensed locations" vs. branch requirements (and no action relief); and explicit requirements.
- Monitor guidance for revisions and rescission.

- Best practices:
  - Temporary policies, procedures, and a plan for supervision of employees and service providers.
  - Computers and devices that leave a licensee's authorized location(s) should include at-rest encryption.
  - If paper records containing confidential information are taken off the premises of a licensee's authorized location(s), procedures must be established to secure that information at the off-site location.
  - Connections to the licensee's authorized location(s) or sensitive systems via any out-of-office device (e.g., laptop, desktop, phone, tablet) should be encrypted in transit by use of a virtual private network (VPN) or similar technology that requires a password or other form of authentication.
  - Limit or disable printing and communications features.
  - Activity should be conducted in a private home environment, avoiding public areas such as coffee shops or libraries.
  - Monitor and audit in conjunction with IT and QA.

VENABLE LLP

Quick Hits on Electronic Signatures and Steps to Take to Minimize New Compliance Risks

Two FAQs

Electronic Signatures in Global and National Commerce Act (ESIGN)

- An electronic signature is any "electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record."
- An electronic signature is legally enforceable as a signature as long as the consumer affirmatively consents to completing the transaction electronically; however, there are exceptions for areas such as wills, trusts, and other matters of family law where such electronic signatures are not enforceable.
- ESIGN is applicable to the Uniform Commercial Code sections pertaining to sales and leases, and applies to interstate and foreign commerce.
- UETA applies in most intrastate situations
- Notary Requirements: Some states allow remote notary

- New Compliance Risks:
  - Documentation policies, procedures, and practices
  - Monitor and audit
  - Track legal and regulatory basis for modifications from standard practices.
  - Third-party service providers
  - Fraud risk: What are your services used for in the COVID-19 era?

Payments

A Critical Industry During COVID-19 Outbreak

VENABLE LLP

Payments: Critical Infrastructure

- Various existing payments technologies are supporting physical POS transactions, including digital wallets, contactless cards, and card-on-file mobile wallet payments.
  - Surveys showing increased U.S. consumer interest in contactless technologies.
- Increased reliance on e-commerce transactions.
  - Surge in hiring at large online retailers to manage increase in e-commerce payments.
  - In Italy, e-commerce transactions have soared by 81% since the end of February, and in the UK the limit on contactless payments has been increased.
  - Note that e-commerce has higher rates of fraud and has been increasing.
- Use of prepaid cards to support businesses
  - See, e.g., Kabbage launches online platform to help small businesses offer digital gift certificates on their own websites.

Payments: Beware of Fraud

- Federal Regulators have a long history of targeting payments companies alleged to have facilitated fraud by merchants.
  - Federal Trade Commission (FTC), U.S. Food and Drug Administration (FDA), and State Attorneys have issued warnings related to coronavirus fraud.
  - DOJ announced its first enforcement action involving coronavirus fraud, and has set up a webpage dedicated to coronavirus fraud. (https://www.justice.gov/coronavirus)
- Following 2008 financial crisis, for example, significant focus on financial services companies that targeted distressed consumers, in areas like loan modification, foreclosure relief, debt collection, credit repair, etc.
- Financial services providers, including payments companies, need to be careful that they are not facilitating services by fraudulent merchants, particularly those targeting distressed consumers.

Watch for Developments

A few items to continue to follow:

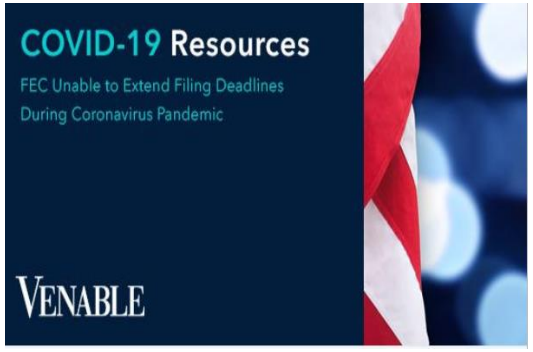
- Loan Servicing: Depending on the loan type, there may be foreclosure and/or reporting limitations. However, there may also be a need to consider how best to manage loss mitigation and an increase in customer service.
- Credit Reporting: Be mindful of FCRA and UDAAP guidance for credit furnishing
  - Migration to telework is a challenge for dispute resolution procedures, especially given the rigid statutory timelines for investigation and resolution.
- Collection: Collectors and loan servicers face numerous other challenges in this new environment and need to be mindful of state law changes, mandates, guidance, etc.
- BSA/AML: Potential delays in reporting timelines and fraud risks related to teleworking and limited capabilities.
- Privacy and Data Security: Securing your network and data downloads (if allowable) while teleworking.
- Consumer Complaints: Evaluate coding, and responses in light of evolving climate.
- M&A opportunities and due diligence.

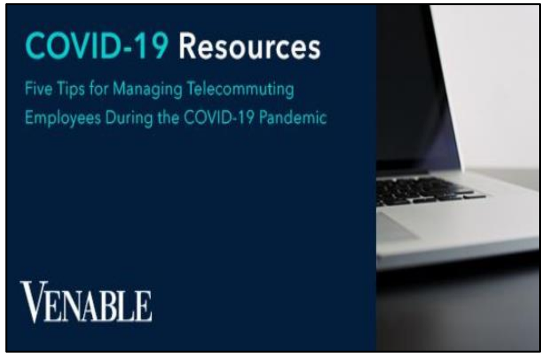
www.Venable.com/COVIDCFS

www.Venable.com/covid-19

VENABLE LLP

Recent and Upcoming Webinars & Events





- Cybersecurity Considerations for Telework, March 23
- Contract Performance and Frustration in Coronavirus's New Normal — Performing the Impossible and Impractical in Key Jurisdictions, March 24
- Customer Reviews: The Dos and Don’ts, March 26
- Mini-CFPBs – What Increased Regulation, Enforcement, and Supervision by State Agencies Means for the Financial Services Industry, April 15
- Financial Services Advertising Enforcement Update, April 23
- "Compliance University" Presented by Online Lenders Association, July 21-22

Questions?

Questions and Additional Information

Read more at www.Venable.com/cfs/publications

R. Andrew Arculin
Partner
202.344.4588
raarculin@Venable.com

Allyson B. Baker
Partner
202.344.4708
abbaker@Venable.com

Andrew E. Bigart
Partner
202.344.4323
aebigart@Venable.com

Laura R. Biddle
Partner
202.344.4026
lrbiddle@Venable.com

Joshua H. Raymond
Partner
202.344.4382
jhraymond@Venable.com

Gerald S. (Gerry) Sachs
Partner
202.344.4269
gsachs@Venable.com

Jonathan L. Pompan, Moderator
Partner
202.344.4383
jlpompan@Venable.com

For details and complete index of upcoming Events, visit www.Venable.com/cfs/events

VENABLE LLP


www.Venable.com/cfs
Consumer Financial Services
Legal & Regulatory Update: COVID-19
Webinar | Wednesday, March 25 | 2:00 - 2:50 PM EST
VENABLE